

## Investigative Detentions

Tim: Hi. I'm Tim Miller. I'm back with Officer Greg Coffel. Greg and I have created a story. Officer Coffel followed me East on Highway 66 to a gas station called the Gas and Go. He suspects that I'm a drug trafficker. He doesn't have enough facts to seize me; not yet. If Greg wants to seize me under the Fourth Amendment, he'll need to articulate at least a reasonable suspicion that criminal activity is afoot. With reasonable suspicion that I'm a drug trafficker, Greg can conduct an investigative detention. The detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop – meaning to confirm or deny his suspicion that drugs are in my car.

Greg: Let's review the facts. Mr. Miller is my suspect. So far, I know this:

- Mr. Miller was traveling east on Highway 66. Based on my training and experience, I know that 66 East is a major drug corridor.
- Second, he was driving a rental car. Based on my training and experience, I know that drug traffickers often use rental vehicles.
- Third, I saw that the rental vehicle has several air fresheners attached to the rear view mirror. Drug traffickers often use air fresheners in an attempt to mask the odor of narcotics.
- Fourth, his reaction upon seeing me as he drove down the interstate was suspicious. I was standing in the middle of the medium by my cruiser when Mr. Miller drove by. Our eyes met and he immediately locked his arms out at the 10 – 2 position on the steering wheel and looked away.

I don't have enough facts for a Fourth Amendment seizure; but I'm close.

Tim: Greg, let's go back **in role** and see if you can get those facts.

Again, Officer Coffel and I are at the Gas and Go. I've pulled up to one of the gas pumps. I'm scared – really scared. But my plan is to talk myself out of this mess. I'm going to pretend that I've done nothing wrong and that I've pulled into the gas station for gas and a drink.

Greg: ***Sir, how are you?***

Tim: Ok.

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Greg: My name is Officer Greg Coffel. I'm part of a task force patrolling Highway 66. We are trying to keep the highway safe for other motorists. Can I talk to you for a few minutes?

Miller: Yea; I guess. I didn't do anything.

Greg: I hope that I didn't imply that you did. I'm just asking for your assistance. Is everything ok, today?

Miller: Yea. Everything is ok. I just needed some gas and a drink of water.

Greg: I see. What's your name?

Miller: Ah,...Tim Miller.

Greg: Is this a rental car, Mr. Miller.

Miller: Uh, yea.

Greg: Can I see your rental agreement and driver's license, please.

Miller: Yea; wait a minute...here you go. How long is this going to take?

Greg: Just a few minutes. I sure do appreciate this, Mr. Miller. I see you're from El Paso, Texas, and that you rented this car in El Paso.

Tim: Let's stop here for a minute and go **out of role**. What are you going to do with my ID.

Greg: This is a voluntary contact. You didn't have to give me your ID. However, you did give it to me...and now I'm going to use it. I'm going to contact the National Crime Information Center or NCIC. Your prior criminal history is relevant. It's a factor to consider in determining whether I have reasonable suspicion to seize you.

The NCIC may also tell me that you have an outstanding arrest warrant. In that case, I will determine whether the warrant is still valid and whether you are the person specified in the warrant. If the crime is within my arrest authority, I will arrest you. If the crime is outside the scope of my statutory arrest authority, I will

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contact my supervisor or follow my agency policy. I may be able to detain you for a reasonable period of time so that an officer with the proper authority can make the arrest.

Finally, drug traffickers often travel with false identification documents. If I can develop probable cause that you intentionally gave me a false identification document or that you gave me false information about your identify, I be able to arrest you.

Tim: Ok; let's assume that I gave you my ID. Let's go back **in role**. Resume your questioning.

Greg: Where are you going, Mr. Miller?

Tim: Ahh,...Jacksonville, Florida. I got a friend there.

Greg: Where in Jacksonville?

Tim: Ammm,...I can't really tell you. I can't remember the address.

Greg: What's your friend's name, Mr. Miller?

Tim: Ahh,...Jim Smith.

Greg: Well, I'm curious Mr. Miller. How are you going to find Jim if you don't have an address? Do you have a phone number?

Tim: Ahh,...No I ain't got a phone number, either.....I just know how to get there. I've been there before. I remember how to get there by heart.

Greg: What does your friend do for a living?

Tim: Gosh,...construction I think.

Greg: What kind of construction?

Tim: Ah,...I can't remember. He builds stuff.

Greg: What are you going to do in Jacksonville?

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Tim: Ah,...I don't know; just chill-out for a week or so.

Greg: Looks like you're traveling light. I don't see any luggage in the passenger compartment.

Tim: Yea; I've got some more clothes at my friend's house.

Listen Officer, what's this all about?

Greg: Mr. Miller, we've had reports of people trafficking narcotics on this highway. Just to alleviate any concerns I might have, would you mind if I search your car?

Miller: Ahh,...No; I don't want you to do that. Listen, a couple of years ago I had a run in with the law. I let a cop search my car. The cop found some dope and the cop and the prosecutor said it was mine. Now I don't let people inside my car. I know my rights.

Alright, let's go **out of role** again. I *do not* have to consent to a search. Or, I can consent, but limit the scope of the search. Or, I may consent to a search, but later withdraw my consent.

That's my choice. Here's my point: my decision to exercise my constitutional rights should not be a factor in Officer Coffel's decision to seize me.

Greg: True. I can't use your decision to exercise your right to refuse consent to a search; however, in refusing consent, you also admitted to having a "run-in with the law." You admitted to having "dope" in your vehicle on an earlier date. Based on my training and experience, I know that the word "dope" is common street term for controlled substances.

A few minute ago, I did an NCIC. My NCIC will confirm that Mr. Miller does have a prior conviction for possession of controlled substances with intent to distribute. I can use that information.

Tim: Agreed. Let's go back **in role**. Resume your questioning.

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Greg: I can see that you have some air fresheners on your rear-view mirror. What's that for?

Miller: The car stinks.

Greg: But it's a rental car, Mr. Miller.

Tim: Yea; I don't like that **rental** smell.

Greg: Mr. Miller, did I hear you correctly when you said you were stopping for gas?

Tim: Yea; I need gas and a bottle of water. Can I go now?

Greg: No sir; I believe that you may have drugs in your car. I'm going to hold you here no longer than necessary to confirm or deny that suspicion. That's going to be about 30 or 40 minutes, or the time necessary to get a drug dog here to sniff the exterior of your vehicle. If the dog does not detect drugs, I'll let you go.

Turn around and put your hands behind your back. I'm going to keep you in handcuffs during this detention.

Miller: All right; let's go out of role. Now I'm seized under the Fourth Amendment. Moreover, my vehicle was seized. Seizures must be reasonable. Officer Coffel's can seize me and my car if he has a reasonable suspicion that criminal activity is afoot; in this case, reasonable suspicion that I'm trafficking narcotics and that there are drugs in my car.

What is reasonable suspicion? Well, sorry; it's not capable of precise definition. We know that RS is based on articulable fact; but RS is less demanding than probable cause for an arrest. An arrest is taking someone into custody to answer for a crime. To arrest me, Officer Coffel must be ready to articulate facts - rising to a fair probability that I committed a crime.

Officer Coffel, do you feel comfortable arresting me and taking me before a magistrate?

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Coffel: Not yet. I'll decide whether to arrest you after a drug dog sniffs the exterior of your car. If he alerts, I'll search your car. And if I find drugs, I will arrest you.

Miller: Right now Officer Coffel only has reasonable suspicion that I'm trafficking narcotics. With reasonable suspicion, he can conduct an investigative detention or Terry Stop. Terry Stops are less intrusive than an arrest. And since a Terry Stop is less intrusive than an arrest, it can be done with a lesser standard of proof.

Reasonable suspicion is... a rational reason to suspect criminal activity is afoot. The officer must point to articulable facts rising to a rational reason or reasonable suspicion that I'm trafficking narcotics.

Greg: Let's review the facts that justify my reasonable suspicion and this seizure:

- First, Mr. Miller was traveling on a major drug corridor.
- Second, he was driving a rental car. Based on my training and experience, I know that drug traffickers often use rentals.
- Third, he had air fresheners in the car. I know that drug traffickers often use air fresheners in an attempt to mask the odor of drugs.
- Forth, his reaction upon seeing me as he drove by was suspicious. I was standing in the middle of the medium by my cruiser when he drove by. Our eyes met and he immediately locked his arms out at the 10 – 2 position on the steering wheel.

I didn't have enough facts to seize Mr. Miller when he initially pulled into the Gas and Go. Mr. Miller could leave and I could not lawfully stop him. However, he decided to talk to me. And when he did, I gathered these additional facts:

- Fifth, Mr. Miller was nervous. Articulable facts of nervousness might be: the thumping of one's carotid artery; his heavy breathing, which might be evidenced by the rapid rising and falling of his stomach; sweating and sweat stains on the shirt; and his shaking hands or limbs.
  - *Law enforcement officers should remember that while nervous behavior is a factor to consider in determining whether criminal*

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*activity is afoot, it's of limited value. Even innocent people can display some nervousness when being questioned by police.*

- Sixth, Mr. Miller was being deceptive. Deception or evasiveness when answering questions is a factor to consider in deciding whether criminal activity is afoot.
  - Deception may also give rise to probable cause for an arrest. Anyone who intentionally makes a materially false statement to a federal officer about a federal matter within the officer's jurisdiction to investigate may be punished under 18 USC 1001. Here are some facts suggesting Mr. Miller was deceptive or evasive:
    - I asked why Mr. Miller stopped at the convenience store and he said, "I just needed to stop for some gas and water." That's not true; at least, not the part about needing gas. Another law enforcement officer told me that Mr. Miller had only recently stopped for gas.
    - He was evasive in answering my questions; it was like he was making up the answers.
    - He hesitated when I asked for his friend's name in Jacksonville.
    - He didn't have an address or phone number for the friend.
- Seventh, I determined that this was an extended trip, but Mr. Miller did not have any clothes or luggage.
- Seventh, there were air fresheners on the rear-view mirror.
  - *Also, a lot of fast food wrappers in the car is another factor to consider in determining whether someone is traveling over extended distances and trafficking.*
- Finally, according to the National Crime Information Center, Mr. Miller has a prior conviction for possessing controlled narcotics with the intent to distribute them.

Miller: Thanks. Officer Coffel had a hunch that I was trafficking narcotics. Law enforcement officers cannot seize people based on a mere hunch. They need at least reasonable suspicion. So Officer Coffel bided his time and made a voluntary contact.

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Voluntary contacts do not trigger the Fourth Amendment because a reasonable person should feel free to leave or terminate the encounter. While I personally may have felt seized when Officer Coffel asked to talk to my subjective beliefs or the subjective beliefs of a drug trafficking/suspect are not relevant.

During that voluntary contact, Officer Coffel added information to his arsenal of facts that did rise to a reasonable suspicion that I was trafficking.

That's enough for now. When we come back, we are going to talk about legal bases for forcing stops on the highway.